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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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08/421,810

04/13/1995

ALEXANDER CONRAD

20259-14

6611

572

7590

04/13/2006

CLIFFORD A. POFF
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SUITE 115
PITTSBURGH, PA 15237

EXAMINER

HOLLOWAY III, EDWIN C

ART UNIT

PAPER NUMBER

2612

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

2nd Supplemental Notice of Allowability	Application No.	Applicant(s)	
	08/421,810	CONRAD ET AL.	
	Examiner	Art Unit	
	Edwin C. Holloway, III	2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--
All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the 3-15-06 request for reconsideration.
2. ☒ The allowed claim(s) is/are 49-77,79,80,82-87,89,90,92-97,99 and 100.
3. ☒ The drawings filed on 4-13-95 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☒ to Paper No./Mail Date 5.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

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Examiners Comments

Applicant's argument that the amendment submitted on 10-28-05 adding new claims 102-107 should be entered because the Board Decision awarded applicant all claims 1-30 of the count and MPEP 2308.02 is limited to claims not within a count. The examiner disagrees because claims 102-107 correspond to claims 78, 81, 88, 91, 98 and 101 that were canceled by an amendment filed by applicant on 4-3-00 after being rejected under 35 USC 112 first paragraph on 9-27-99. Therefore, entry of this amendment would raise the new issue after prosecution on the merits has been closed of considering claims that were not pending in the instant application during the appeal and interference and would necessitate a rejection under 35 USC 112 first paragraph.

Applicant's argument that the interference decision awarded claims 7, 10, 17, 20, 27 and 30 claims US Patent No. 5627524 to applicant is not persuasive. The interference decision ordered a judgment against the junior party as to claim 1 and ordered that the junior party is not entitled to its patent claims 1-30 corresponding to claim 1, but does not state that applicant is entitled to claims 7, 10, 17, 20, 27 and 30 of US Patent No. 5627524 that correspond to claims 78, 81, 88, 91, 98 and 101 that were canceled by an amendment filed by applicant on 4-3-00. The interference judgment simply resolves any question of

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priority between the parties, but does not prevent the examiner from making rejections. See MPEP 2308. Therefore, the interference decision does not overcome the 112 first rejection of the canceled claims. Entry of this amendment is denied.

CONTACT INFORMATION

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact an Electronic Business Center (EBC) representatives at 703-305-3028 or toll free at 866-217-9197 between the hours of 6 a.m. and midnight Monday through Friday EST, or by e-mail at ebc@uspto.gov. The Patent EBC is a complete customer service center that supports all Patent e-business products and service applications. Additional information is available on the Patent EBC Web site at <http://www.uspto.gov/ebc/index.html>.

Any inquiry of a general nature should be directed to the Technology Center 2600 receptionist at (571) 272-2600.


Facsimile submissions may be sent via central fax number 571-273-8300 to customer service for entry by technical support staff. Questions related to the operation of the facsimile system should be directed to the Electronic Business Center at (866) 217-9197. On July 15, 2005, the Central FAX Number will change to.

CENTRALIZED DELIVERY POLICY: For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the Central FAX number, unless an exception applies. For example, if the examiner has rejected claims in a regular U.S. patent application, and the reply to the examiner's Office action is desired to be transmitted by facsimile rather than mailed, the reply must be sent to the Central FAX Number. Inquiries concerning only hours and location of the Customer Window may be directed to OIPE Customer Service at (703) 308-1202.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edwin C. Holloway, III whose telephone number is (571) 272-3058. The examiner can normally be reached on M-F (8:30-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy Garber can be reached on (571) 272-7308.

EH
4/10/06


EDWIN C. HOLLOWAY, III
PRIMARY EXAMINER
ART UNIT 2612